

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

SCOTT D. KEITH, Plaintiff, vs. CITY OF TEA SD, TEA POLICE DEPT., JESSICA QUIGLEY, CHIEF OF POLICE, TEA SD; CITY OF TEA POLICE OFFICERS, TWO UNKNOWN; LINCOLN COUNTY SHERIFF SWENSON, LINCOLN COUNTY SHERIFF'S DEPT., LINCOLN COUNTY DEPUTY, UNKNOWN; AND LINCOLN COUNTY, Defendants.	4:19-CV-04157-LLP ORDER GRANTING PLAINTIFF' S MOTION TO PROCEED IN FORMA PAUPERIS
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Plaintiff, Scott D. Keith filed a pro se lawsuit pursuant to 42 U.S.C. § 1983 alleging violations of the Eighth Amendment. Docket 1. Keith informed the Court that he has been "extradited to Lyon County Jail in Rock Rapids, Iowa." Docket 6 at 1. Keith filed a motion to proceed in forma pauperis and provided his prisoner trust account. Dockets 2 and 4.

MOTION TO PROCEED IN FORMA PAUPERIS

Under the Prison Litigation Reform Act (PLRA), a prisoner who "brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee." 28 U.S.C. ' 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, " '[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under

an installment plan.' " *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. ' 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Keith filed a prisoner trust account and the account shows his current balance as \$0.00 and his average monthly balance as \$0.13. Docket 4 at 1. Based on this information, the Court grants Keith leave to proceed in forma pauperis and waives his initial partial filing fee.

In order to pay his filing fee, Keith must "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. ' 1915(b)(2). The statute places the burden on the prisoner's institution to collect the additional monthly payments and forward them to the Court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. ' 1915(b)(2). The installments will be collected pursuant to this procedure.

The clerk of the court will send a copy of this order to the appropriate financial official at plaintiff's institution. Keith will remain responsible for the entire filing fee, as long as he is a prisoner, even if the case is dismissed at some later time. See *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997).


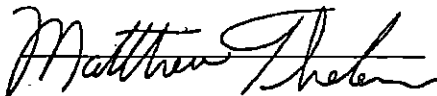
Accordingly, it is ORDERED

1. Keith's motion for leave to proceed in forma pauperis (Docket 2) is granted and his initial filing fee is waived.
2. The institution having custody of Keith is directed that whenever the amount in Keith's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to the Keith's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED September 27th, 2019.

BY THE COURT:

ATTEST:
MATTHEW W. THELEN, CLERK


Lawrence L. Piersol
United States District Judge